

REMARKS

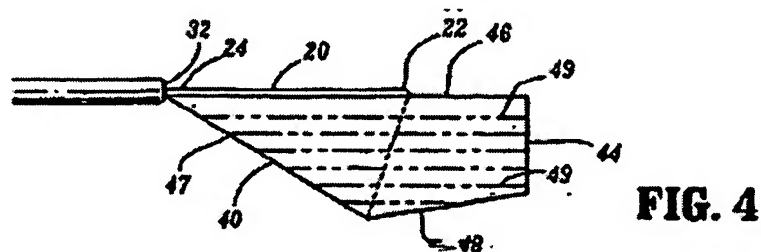
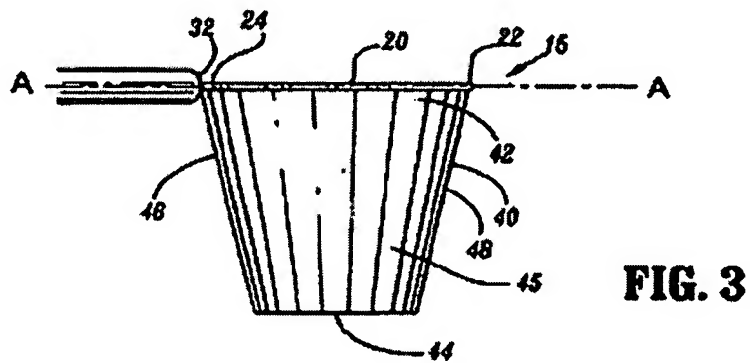
The present application has been reviewed in light of the Final Office Action dated July 17, 2007. Claims 1-32 are currently pending, of which, claims 1, 19, 28 and 31 have been amended herein. Applicant submits that these amendments adds no new matter, are fully supported by the specification, and are allowable over the prior art of record. In light of the amendments made herein and the remarks and arguments that follow, early and favorable reconsideration and allowance of this application are respectfully requested.

Claims 1-5, 7-9, 12-16 and 18-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,215,521 to Cochran *et al.* (hereinafter "Cochran") in view of U.S. Patent No. RE 35,164 to Kindberg *et al.* (hereinafter "Kindberg"). Applicant respectfully submits that Cochran in view of Kindberg fails to render obvious each and every feature recited in each of independent claims 1, 19, 28 and 31.

Independent claim 1 recites, *inter alia*, a "bag having a first edge and a second edge" and "having folds including at least one transverse fold, wherein the at least one transverse fold extends at least partially from the first edge toward the second edge such that an angle less than 90° is defined in relation to the longitudinal axis."

According to the present disclosure, during folding of the bag, as seen in the transition between FIGS. 3 and 4 below, the bottom end 44 of bag 40 is bent over on itself such that proximal folded edge 46 is approximately aligned and in apposition with bag support 20, and

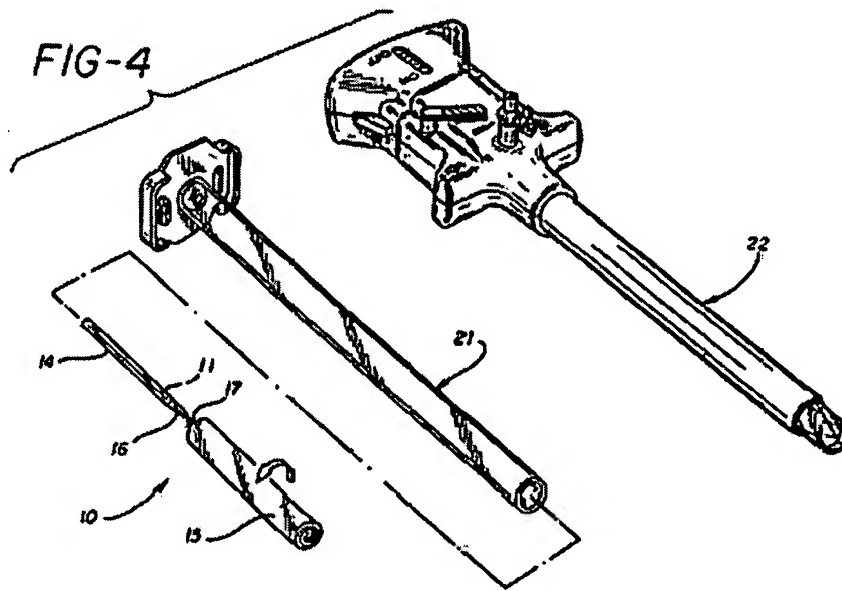
bottom end 44 is disposed so that bottom end 44 extends along an axis that is orthogonal to the longitudinal axis "A" of the device. (See page 13, lines 7-10). Folding the bag 40 in this manner creates a transverse fold 47 that runs "at an angle relative to longitudinal axis 'A'," extending from proximal folded edge 46 to distal folded edge 48. (See *id.* at lines 10-11).



In the Office Action, the Examiner asserted that Cochran discloses the device recited in independent claim 1 but for the transverse nature of the folds in the bag, and relied on Kindberg for the disclosure of that concept.

Contrary to that assertion, however, the surgical bag disclosed in Kindberg is folded about the longitudinal axis defined by the device such that the fold created is parallel in relation

thereto, as seen in FIG. 4 below. Stated differently, the fold created in the bag disclosed in Kindberg defines an angle of 0° in relation to the longitudinal axis of the device, and is therefore not a transverse fold.



Accordingly, Applicant respectfully submits that Cochran in view of Kindberg fails to render obvious a “bag having a first edge, a second edge” and “having folds including at least one transverse fold, wherein the at least one transverse fold extends at least partially from the first edge toward the second edge such that an angle less than 90° is defined in relation to the longitudinal axis”, as recited in amended independent claim 1. (Emphasis added).

For at least this reason, *inter alia*, Applicant respectfully submits that Cochran in view of Kindberg fails to render obvious each and every element recited in amended independent claim 1, and therefore, that claim 1 is allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

As claims 2-5, 7-9, 12-16 and 18 depend either directly or indirectly from independent claim 1, for at least the reasons discussed above with respect to the allowability of claim 1, Applicant respectfully submits that claims 2-5, 7-9, 12-16 and 18 are also allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

Independent claim 19 recites a method of collapsing a bag of a tissue removal device comprising the step of, *inter alia*, “folding the bag transversely with respect to the longitudinal axis” of the device “such that at least one transverse fold is formed, wherein the at least one transverse fold extends at least partially from the first edge toward the second edge such that an angle less than 90° is defined relative to the longitudinal axis.”

As discussed above with respect to claim 1, Applicant submits that Cochran in view of Kindberg suggests the folding of a surgical bag such that the fold is parallel, and therefore not transverse, in relation to the longitudinal axis of the device, defining an angle of 0° therewith. Accordingly, Applicant further submits that Cochran in view of Kindberg fails to render obvious “folding the bag transversely with respect to the longitudinal axis” of the device “such that at least one transverse fold is formed, wherein the at least one transverse fold extends at least

partially from the first edge toward the second edge such that an angle less than 90° is defined relative to the longitudinal axis,” as recited in amended independent claim 19.

For at least this reason, Applicant respectfully submits that Cochran in view of Kindberg fails to render obvious each and every element recited in amended independent claim 19, and therefore, that claim 19 is allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

As claims 20-27 depend either directly or indirectly from independent claim 1, for at least the reasons discussed above with respect to the allowability of claim 19, Applicant respectfully submits that claims 20-27 are also allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

Amended independent claim 28 recites, *inter alia*, a bag that is “folded over onto itself so as to form at least one transverse fold defining a fold axis, wherein the fold axis defines an angle between 0° and 90° relative to the longitudinal axis.”

As discussed above with respect to claim 1, Applicant submits that Cochran in view of Kindberg suggests the folding of a surgical bag such that the fold is parallel, and therefore not transverse, in relation to the longitudinal axis of the device, defining an angle of 0° therewith. Accordingly, Applicants further submit that Cochran in view of Kindberg fails to render obvious a bag that is “folded over onto itself so as to form at least one transverse fold defining a fold axis, wherein the fold axis defines an angle between 0° and 90° relative to the longitudinal axis” as

recited in amended independent claim 28. (Emphasis added).

For at least this reason, Applicant respectfully submits that Cochran in view of Kindberg fails to render obvious each and every element recited in amended independent claim 28, and therefore, that claim 28 is allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

As claims 29-30 depend either directly or indirectly from independent claim 28, for at least the reasons discussed above with respect to the allowability of claim 28, Applicant respectfully submits that claims 29-30 are also allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

Independent claim 31 recites, *inter alia*, a bag that is “folded over onto itself such that the axis of the fold is substantially non-parallel and non-orthogonal to the longitudinal axis of the shaft.”

As discussed above with respect to claim 1, Applicant submits that Cochran in view of Kindberg suggests the folding of a surgical bag such that the fold is parallel, and therefore not transverse, in relation to the longitudinal axis of the device, defining an angle of 0° therewith. Accordingly, Applicants submit that Cochran in view of Kindberg fails to render obvious a bag that is “folded over onto itself such that the axis of the fold is substantially non-parallel and non-orthogonal to the longitudinal axis of the shaft.” (Emphasis added).

For at least this reason, Applicant respectfully submits that Cochran in view of Kindberg fails to render obvious each and every element recited in amended independent claim 31, and therefore, that claim 31 is allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

As claim 32 depends directly from independent claim 28, for at least the reasons discussed with respect to the allowability of claim 31, Applicant respectfully submits that claim 32 is also allowable over Cochran in view of Kindberg under 35 U.S.C. § 103(a).

In the Office Action, claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cochran in view Kindberg and further in view of U.S. Patent No. 5,899,694 to Summer (hereinafter “Summer”). Applicant respectfully submits, however, that Cochran in view Kindberg and further in view of Summer fails to suggest each and every element and feature of the tissue removal device recited in claim 6.

In the Office Action, it was asserted that Summer discloses the sheath recited in claim 6. However, as discussed above, Cochran in view of Kindberg fails to suggest the bag “having folds including at least one transverse fold, wherein the at least one transverse fold extends at least partially from the first edge toward the second edge such that an angle less than 90° is defined in relation to the longitudinal axis” recited in amended independent claim 1. The addition of the sheath allegedly disclosed in Summer fails to cure this deficiency. Therefore, as claim 6 depends from claim 1, it is respectfully submitted that claim 6 is allowable under 35 U.S.C. § 103(a) over Cochran in view of Kindberg and further in view of Summer.

Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cochran in view Kindberg and further in view of U.S. Patent No. 6,402,722 to Snow (hereinafter "Snow"). Applicant respectfully submits, however, that Cochran in view Kindberg and further in view of Snow fails to suggest each and every element and feature of the tissue removal device recited in claims 10 and 11.

In the Office Action, it was asserted that Snow discloses the cord, and the features thereof, recited in claims 10 and 11. As previously discussed, Cochran in view of Kindberg fails to suggest the bag "having folds including at least one transverse fold, wherein the at least one transverse fold extends at least partially from the first edge toward the second edge such that an angle less than 90° is defined in relation to the longitudinal axis" recited in amended independent claim 1. The addition of the cord allegedly disclosed in Snow fails to cure this deficiency. Therefore, as claims 10 and 11 depend from claim 1, it is respectfully submitted that claims 10 and 11 are allowable under 35 U.S.C. § 103(a) over Cochran in view of Kindberg and further in view of Snow.

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cochran in view Kindberg. Applicant respectfully submits, however, that Cochran in view Kindberg fails to suggest each and every element and feature of the tissue removal device recited in claim 17.

In the Office Action, it was acknowledged that Cochran in view of Kindberg fails to suggest such a trapezoidal bag, but it was asserted that it would have been obvious to one of

ordinary skill in the art to modify the bag suggested by Cochran in view of Kindberg to exhibit a trapezoidal shape. However, as previously discussed, Cochran in view of Kindberg fails to suggest a bag “having folds including at least one transverse fold, wherein the at least one transverse fold extends at least partially from the first edge toward the second edge such that an angle less than 90° is defined in relation to the longitudinal axis” as recited in amended independent claim 1. Assuming, *arguendo*, that a trapezoidal bag, as recited in claim 17, is known in the art, utilizing such a bag fails to cure the deficiencies of Cochran in view of Kindberg. Therefore, as claim 17 depends from claim 1, it is respectfully submitted that claim 17 is allowable under 35 U.S.C. § 103(a) over Cochran in view of Kindberg.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, the Examiner is respectfully requested to telephone Applicant’s undersigned representative at the number indicated below.

In view of the foregoing amendments, remarks and arguments, reconsideration and allowance of pending claims 1-32 are earnestly solicited.

Respectfully submitted,



Francesco Sardone
Reg. No. 47,918
Attorney for Applicants(s)

CARTER, DeLUCA, FARRELL & SCHMIDT, LLP
445 Broad Hollow Road, Suite 225
Melville, New York 11747
Phone: (631) 501-5700
Fax: (631) 501-3526
FS/nr